erty. * * * It is not the actual dominion but the right to dominion. * * * Possession, on the other hand, is an external characteristic of property. * * * Possession may be transferred where title is not. * * * *Possession may be termed control with intention to exclude.*" Note on *Regina* v. *Ashwell*, 16 Cox C. C. 1, in 7 COL. L. REV. 395. It would seem that in a certain class of cases possession might exist without the intent to exclude all other persons; in *fact*, without any intent. Such cases are those where chattels are lost upon the land of one person and taken by another before the owner of the land even has any knowledge of their existence. *Regina* v. *Rowe*, C. C. 93; *Kincaid* v. *Eaton*, 98 Mass. 139. In such instances the only discoverable intent with regard to the chattels must be implied from the larger intent to exclude the public from the land, and hence from everything upon it. On the other hand, the classification of the servant's detention of his master's goods as custody rather than possession would seem to deny the designation of possession to a state of facts including both control and an intention to exclude. And it would be a useless refinement to attempt to show that it were otherwise. This exception, however, is explicable upon historical grounds. When the servant was a slave and had no standing before the law, this fact, as well as the master's actual power over him, conduced to the idea that the custody of the slave was in reality the possession of the master. Disregarding, however, a few such apparent exceptions, it can be said that the common law principle is that a physical detention coupled with an intent to exclude all other persons is sufficient to constitute possession. At first blush, it may seem that the decision in the principal case has injected an additional element into the common law definition. But such is not the case, although of course it would have been competent for the legislature to give the term "possession" any meaning which it saw fit, and the court would have been bound to apply it in that sense. What the statute does, however, is simply to make it unlawful to have possession of intoxicating liquor under such circumstances as would tend to facilitate sale and distribution thereof. Such being the clear intention of the legislature, as gathered from the context of the entire act, the court was bound to effectuate it; and in refusing to hold unlawful possession under any other circumstances than those indicated, its decision is unimpeachable. For a similar statutory interpretation, see *People ex rel. Darling* v. *Warden of Tombs Prison*, 134 N. Y. Supp. 335. See also *Ford v. State* (Ind., 1921), 129 N. E. 625, where defendant had in his possession whisky owned by him in common with another. This was held a violation of a statute making it unlawful to keep intoxicating liquor with intent to furnish or otherwise dispose of it.

JURY—EXCUSING JUROR DOES NOT ENTITLE DEFENDANT TO ANOTHER PEREMPTORY CHALLENGE.—Appellant was convicted of the crime of statutory rape. After the jury had been passed for cause and appellant had exercised four peremptory challenges, the court excused one of the jurors on account of sickness. Appellant objected to this juror being excused unless the court should grant him an additional peremptory challenge, claiming that he did

not intend to challenge this particular juror. The court refused. On appeal, it was insisted that this proceeding in effect deprived him of one peremptory challenge. *Held,* that the trial court properly refused to allow an additional challenge. *State* v. *Pettit* (Idaho, 1920), 193 Pac. 1015.

This case adds one more to the list of those decisions repudiating the doctrine laid down in *People* v. *Stewart,* 64 Cal. 60; and followed in *People* v. *Brady,* 72 Cal. 490; *People* v. *Wong Ark,* 96 Cal. 125; *People* v. *Zeiler,* 135 Cal. 462, and *People* v. *Weber,* 149 Cal. 325. The statutory provision construed in the *Stewart* case was identical with that in the instant case, and provides that when a juror was discharged a new juror might be sworn and the *trial begin anew, or* the jury might be discharged and a new jury impaneled. It was held there that the statute allowed additional peremptory challenges. But that case was not well considered. The court assumed that a trial beginning anew means the impaneling of an entirely new jury. Such a construction makes the section of the Code as a whole incongruous, for it places the two alternative provisions on the same plane and gives to each the same scope and meaning. The effect would be to give the accused the election to discharge the whole jury or not, as he saw fit, whereas the Code expressly placed this election with the court. Judged by all the well-recognized rules of construction, the legislature certainly did not intend both alternatives to mean the same thing. The word "trial" in its restricted sense includes the investigation of facts only. *Jenks* v. *State,* 39 Ind. 9. The decision of the *Stewart* case was carefully reviewed in *State* v. *Hazledahle,* 2 N. D. 521, and its unsoundness conclusively pointed out. The North Dakota case was followed in *State* v. *De Weese,* 51 Utah 515, and in *State* v. *Carmouche,* 141 La. 325. Even the later California decisions, while still adhering to the doctrine laid down in the *Stewart* case, intimate that if it were now a question of first impression they would adopt a different construction. The number of peremptory challenges to which a party is entitled is solely a matter of procedure in which a party has no vested right. The legislature, therefore, may increase or diminish the number at will. *Hopt* v. *Utah,* 110 U. S. 574. If, therefore, the statute allows no extra challenges in such situations as that in the instant case it cannot be successfully contended that the right to additional challenges exists. *State* v. *De Weese, supra.* It is submitted that the defendant in any case could be in no worse position, so far as his peremptory challenges were concerned, when the new juror was sworn on his *voir dire* than he would have been if the juror had not been discharged and he had exhausted all his challenges before the last juror was called into the box.

JURY—WOMEN AS JURORS—WOMAN'S SUFFRAGE AMENDMENT.—Defendant, who was convicted on a charge of larceny by a jury of eleven men and one woman, had on the trial first exhausted his peremptory challenges and then challenged the woman juror for cause on the ground that a woman was prohibited from sitting as a juror by the state constitution, in which reference to a jury of "men" was made. *Held,* that the woman in question was